

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1914.

No. 2728.

163

FREDERICK L. SIDDONS, OLIVER P. NEWMAN, CHESTER
HARDING, COMMISSIONERS OF THE DISTRICT OF
COLUMBIA, ET AL., APPELLANTS,

vs.

SAMUEL S. EDMONSTON, JR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 27, 1914.

PRINTED AUGUST 3, 1914.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1914.

No. 2728.

FREDERICK L. SIDDONS, OLIVER P. NEWMAN, CHESTER HARDING, COMMISSIONERS OF THE DISTRICT OF COLUMBIA; RICHARD SYLVESTER, MAJOR AND SUPERINTENDENT OF THE POLICE OF THE DISTRICT OF COLUMBIA; WILLIAM P. RICHARDS, ASSESSOR, AND THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

SAMUEL S. EDMONSTON, JR., APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2728.

FREDERICK L. SIDDONS et al., Appellants,
vs.
SAMUEL S. EDMONSTON, JR.

a Supreme Court of the District of Columbia.

Equity. No. 32659.

SAMUEL S. EDMONSTON, JR., Plaintiff,
vs.
FREDERICK L. SIDDONS, OLIVER P. NEWMAN, CHESTER HARDING,
Commissioners of the District of Columbia; Richard Sylvester,
Major and Superintendent of the Police of the District of Co-
lumbia; William P. Richards, Assessor, and The District of Co-
lumbia, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1

Petition.

Filed May 15, 1914.

In the Supreme Court of the District of Columbia.

Equity. No. 32659.

SAMUEL S. EDMONSTON, JR., Plaintiff,
vs.
FREDERICK L. SIDDONS, OLIVER P. NEWMAN, CHESTER HARDING,
Commissioners of the District of Columbia; Richard Sylvester,
Major and Superintendent of the Police of the District of Co-
lumbia; William P. Richards, Assessor, and The District of Co-
lumbia, Defendants.

Your plaintiff respectfully represents to the Court as follows:

1st. That he is a citizen of the United States and a resident of the
District of Columbia.

2nd. That the defendants, Frederick L. Siddons, Oliver P. Newman and Chester Harding, are citizens of the United States and residents of the District of Columbia, and are sued as hereinafter mentioned; that the defendants, Richard Sylvester and William P. Richards are citizens of the United States and residents of the District of Columbia, and are sued as hereinafter mentioned; that the defendant, the District of Columbia, is a municipal corporation.

3rd. That the plaintiff is lessee and proprietor of a certain baseball park in the District of Columbia; that the said park is situated in the Northeastern part of said city and is used as a place of amusement; that your plaintiff has been proprietor thereof for a period of more than one year, during which time he has conducted baseball and other games as he had a right in law to conduct the same, and that there has been no interference on the part of any one in his management of said park and in his carrying on amusements in said park as he has seen fit and proper; that since he has been proprietor of said park, it has been the custom to have at said park on Sundays certain games and amusements, and that he has always been given a license therefor, and no one has questioned his right to receive said license; that in order to have at said park a game of baseball and other amusement and charged admission therefor your plaintiff must obtain, and has heretofore obtained, a license under the general license act in force in the District of Columbia, for which he has paid Five Dollars (\$5.00); that he is entitled to said license as a matter of right, and no one has any authority to object thereto.

4th. Your plaintiff further says that he has lately improved the said park for the purpose of having at the said park on certain days a baseball club, known as the "Federals," and that the said park is used as a baseball grounds for the R. P. Andrews baseball club, said club being a local club inviting out of town clubs including said "Federals" to play with them; that some time ago your plaintiff arranged a game to be played at said park on Sunday, May 17th, between the said R. P. Andrews baseball club and the said Baltimore "Federals"; that he has entered into a contract with the said Federals to play, and that the arrangements had been therefor made; that in improving the said park for the said game and the contracts he has entered into, which contracts are binding upon him, he has expended about one thousand dollars; that he pays rent for said park of One Thousand Dollars per year, and that he has a valuable interest in said park and has a right to enjoy his property and obtain a proper income therefrom, and that any infringement of his right to said management, are a taking of property from him without due process of law; that at the time he made said contracts for the said Baltimore Federals he believed that he was entitled to receive the ordinary permit which he had always received when he applied for the same; but that on this day being about to apply for said permit, there was received a copy of an order of the defendant, R. Sylvester, which said order was directed to Inspector Boyle to inform your plaintiff that no license would be granted for playing baseball on Sunday; and that if played without license and

an admission charge was made, all persons participating would be arrested; that said order was made by direction of a commissioner or the commissioners of the District of Columbia, and is without authority of law; that a copy of said order is herewith filed and marked "Exhibit A," that notwithstanding said notice plaintiff applied to the assessor for said license but the same was refused.

5. Your plaintiff represents that he is entitled as matter of right to have said license granted to him, as it has been heretofore granted; and that the defendants or any of them have no right to interfere therewith; that he entered into said contract mentioned aforesaid in good faith and leased said park in good faith, and has expended money for the purpose of carrying on said game, and is entitled to a writ of injunction enjoining the defendants, or any of them, 4 or any officers of the defendant, the municipal corporation, from interfering with said game, and interference therewith will work irreparable injury to your plaintiff.

6th. Plaintiff further says that there is no law in the District of Columbia prohibiting the playing of baseball on Sunday, and that the attempt to refuse him his license aforesaid, is an attempt to put him in a position where he might violate the law by doing what he has a right to do when he receives said license.

Wherefore, the premises considered, your plaintiff prays:

1st. That the United States writ of subpoena may issue to the defendants, Frederick L. Siddons, Oliver P. Newman, Chester Harding, Richard Sylvester, William P. Richards, and the District of Columbia, requiring them to answer the exigencies in this bill.

2nd. That the said defendants named, all of them and each of them, their officers and representatives, be enjoined pendente lite until further order of the Court, and permanently from interfering with or disturbing your plaintiff in conducting said games as he thinks proper at the park aforesaid.

3rd. That a mandatory injunction issue to said William P. Richards, assessor, commanding him to give to your plaintiff the license aforesaid.

4th. That your plaintiff have such other and further relief as the nature of this petition may require.

SAMUEL S. EDMONSTON.

DANIEL W. BAKER,
WILLIAM E. LEAHY,
Attorneys for Petitioner.

5 Samuel S. Edmonston, Jr., being first duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, that the matters and things therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

SAMUEL S. EDMONSTON.

Subscribed and sworn to before me this 15th day of May, A. D., 1914.

[SEAL.]

CHARLES T. PECK, JR.,
Notary Public, D. C.

"EXHIBIT A."

Inspector R. B. Boyle.

SIR: The Corporation Counsel and the Major and Superintendent of Police were this day informed by the Commissioner- that the Union League Park was to open on Sunday next, when a game of ball was to be played under the auspices of the Federal League.

In obedience to orders received, you will inform the management and all persons interested, that no license will be granted for the playing of ball there on Sunday, and if they do play ball without license and charge an admission fee, all persons participating will be arrested. If they have no license, and charge an admission fee, all persons participating will be arrested.

It is important that this notice should be given to those interested in order that they may understand the situation thoroughly and in order that there may be no room for question.

Respectfully,

RICHARD SYLVESTER,
Major and Superintendent.

Order.

Filed May 15, 1914.

* * * * *

Upon consideration of the petition filed therein, it is by the Court, this 15th day of May, A. D. 1914;

Ordered that the said defendants. Frederick L. Siddons, Oliver P. Newman, and Chester Harding, Commissioners of the District of Columbia, and Richard Sylvester, maior and superintendent of the Police, and the District of Columbia, its officers, agents, and representatives, be, and they are, hereby restrained (until further order of the Court) from interfering with the plaintiff in the conducting of baseball games in the park of which he is lessee in the northeastern part of the City of Washington. District of Columbia the said park being situated at 15th and Bladensburg Road, and for which he has requested, or may request, a license under the general law, said preliminary restraining order to remain in effect until further order of this court to be had, if at all, upon the 22nd day of May 1914, provided a copy of this order be served forthwith on the defendants, and provided further that the plaintiff give the undertaking required by law and the rules of Court.

By the Court:

ASHLEY M. GOULD, *Justice.*

8

Answer of Defendants.

Filed May 22, 1914.

* * * * *

Now come the defendants and for answer to the petition filed herein respectfully show to the Court as follows:

1 and 2. They admit the allegations of Paragraphs 1 and 2 of the said petition.

3. Answering Paragraph 3, defendants admit the allegations of fact therein set forth except the allegation as to the question of the custom to have at the plaintiff's park certain games and amusements on Sunday. Defendants deny that there has been any custom in regard to the matter but admit that certain games and amusements have been played at the plaintiff's park on Sundays. The defendants deny the matters of law set forth in said paragraph.

4. Answering Paragraph 4, defendants say that the matters and things therein set forth referring to use of the plaintiff's park and contracts made with reference thereto and the expenditure of moneys made thereon are immaterial, but if deemed material defendants admit the same.

5. Answering Paragraph 5, defendants say that the matters of fact therein stated are immaterial, or if material, admit the same, and they deny the matters of law therein set forth.

6. Answering Paragraph 6, defendants say that there is a certain Police Regulation or Ordinance, to wit, Section 16, Article 16, of the Police Regulations, which has been in operation for many
9 years which forbids games on Sunday and inclusively games of baseball to which admission fees are charged; that the said regulation or ordinance is a valid and reasonable regulation and has been — force for many years. The same is set forth herein for the information of the Court:

"SEC. 16. No owner, proprietor, lessee, tenant, or other person shall on the first day of the week, commonly called Sunday, in any theater or public place of amusement permit, allow, or take any part in any manner in any public exhibition of any entertainment, play, opera, circus, animals, gymnastics, game, dance or dances, or vaudeville performance of any kind, except the exhibition of moving or other pictures, vocal or instrumental concert, or singing by singer or singers, artist or artists not in character costume, lectures and speeches; Provided, That nothing herein contained shall be held or construed to change, abrogate, or annul the regulations in force for the protection of the public decency, all of which shall be applicable to the performances allowed under the terms of this regulations."

OLIVER P. NEWMAN,
F. L. SIDDONS,
CHESTER HARDING,
WM. P. RICHARDS,
RICH'D SYLVESTER,

Defendants.

CONRAD H. SYME
Attorney for Defendants.

DISTRICT OF COLUMBIA, ss:

Frederick L. Siddons, Oliver P. Newman, Chester Harding, Commissioners of the District of Columbia, Richard Sylvester, Major and Superintendent of Police of the District of Columbia, and William P. Richards, assessor, being first duly sworn, depose and say that they have read the foregoing answer by them subscribed and know the contents thereof; that the matters and things therein set forth as upon personal knowledge are true and those set forth as upon information and belief they believe to be true.

10

OLIVER P. NEWMAN.
FRED'K L. SIDDONS.
CHESTER HARDING.
WM. P. RICHARDS.
RICH'D SYLVESTER.

Subscribed and sworn to before me this nineteenth day of May, 1914.

[SEAL.]

WILLIAM TINDALL,
Notary Public, D. C.

Motion to Dissolve.

Filed May 22, 1914.

* * * * *

Now come the defendants, by their counsel, and move the Court on their answer to the bill to dissolve the restraining order or injunction heretofore issued in this cause.

CONRAD H. SYME,
Attorney for Defendants.

Mr. D. W. Baker, Attorney for the Plaintiff, Washington, D. C.:

Please take notice that the above motion will be called up before Mr. Justice Gould on Friday, May 22, 1914, at ten o'clock A. M., or as soon thereafter as counsel can be heard.

CONRAD H. SYME,
Attorney for Defendants.

11

Order.

Filed June 18, 1914.

* * * * *

This cause coming on to be heard upon the bill, preliminary restraining order and the answer thereto, and the same having been argued by counsel for the respective parties, it is by the Court this 18th day of June, 1914,

Ordered, adjudged and decreed that the said preliminary restraining order heretofore granted in the said cause be, and the same is hereby, continued, and it being agreed by both parties that this cause shall stand for final hearing on bill and answer, it is by the Court.

Ordered, adjudged and decreed that the said defendants and each of them, their officers, agents and representatives, be, and they are hereby, restrained and enjoined from interfering with the plaintiff in conducting baseball games in the park of which he is lessee, said park being situated in the Northeastern part of the City of Washington, District of Columbia, at 15th Street and Bladensburg Road, provided that the said plaintiff apply for a license under the general license law to conduct said games, he being entitled to said license under the general law, and the District of Columbia having no authority under the several acts of Congress giving it power to pass police regulations to pass section 16 of article 16 of the police regulations. It is further

Ordered, adjudged and decreed that plaintiff recover of the defendants his costs in this suit.

By the Court:

ASHLEY M. GOULD, *Justice*.

12 From this decree the defendants appeal in open Court to the Court of Appeals of the District of Columbia.

ASHLEY M. GOULD, *Justice*.

Appeal, Order for Citation, and Waiver.

Filed July 2, 1914.

* * * * *

The Clerk of said Court will please enter an appeal from the order or decree herein, & issue citation thereon to the plaintiff.

C. H. SYME,

F. H. S.,

Attorney for Defendants.

July 2/14.

Issue & service of citation waived.

DANIEL W. BAKER,

WILLIAM E. LEAHY,

Att'ys for Pl'tf.

Assignment of Errors.

Filed July 9, 1914.

* * * * *

Now come the defendants in the above entitled cause and assign for error the following:

13 1. The Court erred in overruling the motion to dissolve a restraining order issued herein.

2. The Court erred in granting the plaintiff an injunction or order restraining the defendants as prayed in the bill.

3. The Court erred in holding that the Commissioners of the District of Columbia were not empowered by law to enact Section 16 of

Article XVI of the Police Regulations now in force in the District of Columbia, under which Sunday baseball to which an admission fee is charged, is prohibited.

CONRAD H. SYME,
Attorney for Defendants.

Designation of Record.

Filed July 9, 1914.

* * * * *

The Clerk of the Court will please prepare the transcript of record for the Court of Appeals in the above entitled cause consisting of the following:

1. The petition, Exhibit A, and the restraining order.
2. The answer of the defendants.
3. The motion to dissolve and notice.
4. The decree or order entered restraining defendants.
5. The appeal, order for citation and waiver of issue and service of citation.
6. The assignment of errors.
7. This designation.

CONRAD H. SYME,
Attorney for Defendants.

14 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

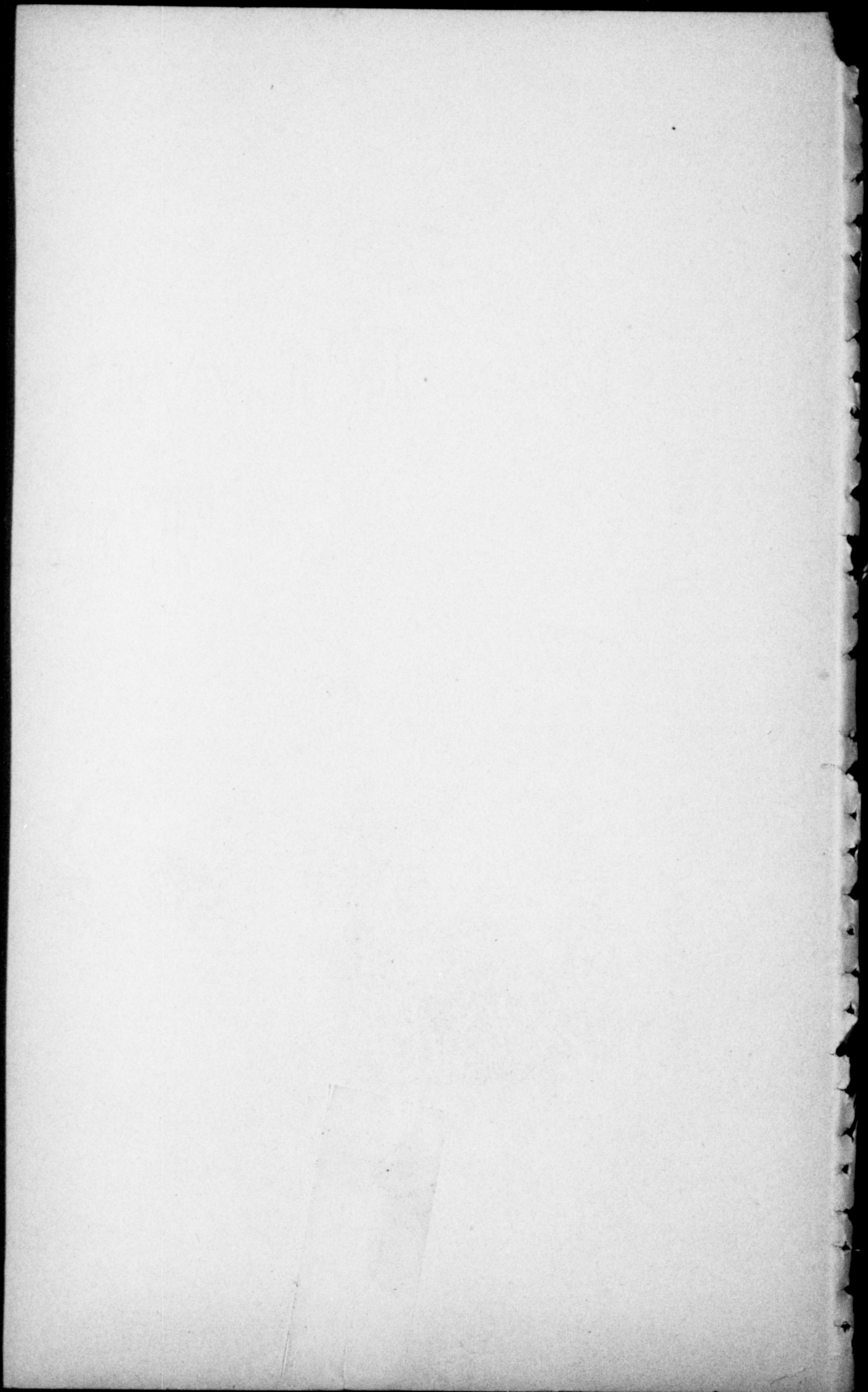
I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 32659 in Equity, wherein Samuel S. Edmonston, Jr. is Plaintiff and Frederick L. Siddons et al., Commissioners, &c., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22'd day of July, 1914.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2728. Frederick L. Siddons et al., appellants, vs. Samuel S. Edmonston, Jr. Court of Appeals, District of Columbia. Filed July 27, 1914. Henry W. Hodges, Clerk.



TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia

OCTOBER TERM, 1914.

No. 2729.

No. 16, SPECIAL CALENDAR.

WILLIAM P. RICHARDS, ASSESSOR OF THE DISTRICT OF
COLUMBIA, APPELLANT,

vs.

UNITED STATES EX REL. SAMUEL S. EDMONSTON, JR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 27, 1914.

PRINTED AUGUST 3, 1914.

Court of Appeals of the District of Columbia

OCTOBER TERM, 1914.

No. 2729.

No. 16, SPECIAL CALENDAR.

WILLIAM P. RICHARDS, ASSESSOR OF THE DISTRICT OF
COLUMBIA, APPELLANT,

vs.

UNITED STATES EX REL. SAMUEL S. EDMONSTON. JR.,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2729.

W. P. RICHARDS, Assessor, etc., Appellant,
vs.
UNITED STATES ex Rel. SAM'L S. EDMONSTON, JR.

a Supreme Court of the District of Columbia.

No. 56918. At Law.

UNITED STATES ex Rel. SAMUEL S. EDMONSTON, JR., Petitioner,
vs.
WILLIAM P. RICHARDS, Assessor of the District of Columbia,
Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for Writ of Mandamus.*

Filed May 19, 1914.

In the Supreme Court of the District of Columbia.

No. 56918. At Law.

UNITED STATES ex Rel. SAMUEL S. EDMONSTON, JR., Petitioner,
vs.
WILLIAM P. RICHARDS, Assessor of the District of Columbia,
Respondent.

The petitioner, the United States, at the relation of Samuel S. Edmonston, Jr., respectfully represents as follows:

1st. That said relator Samuel S. Edmonston, Jr., is a citizen of the United States, and a resident of the District of Columbia.

2nd. That the defendant, William P. Richards is a citizen of the

United States and a resident of the District of Columbia, and is assessor of the District of Columbia.

3rd. That your relator is lessee of a certain athletic park in the Northeastern part of the City of Washington, District of Columbia, the said park being situated at 15th and Bladensburg Road, and that as such lessee he from time to time gives entertainments in said park, including games of baseball and other amusements, the said park being used for athletic purposes.

4. That paragraph 24 of section 7 of the Act of July 1st, 1902, provides as follows:

2 "That owners or lessees of grounds used for horse racing, tournaments, athletic sports, baseball, football, and polo, golf and kindred games, or where feats of horsemanship are performed, to which admission fees are charged or which are used for profit or gain, directly or indirectly, shall pay a license tax of twenty dollars per week or five dollars per day."

That your relator has been lessee of said park aforesaid for more than a year, and has always been granted a license when he desired to give any entertainment or games for which admission fees were to be charged, and that he has never been refused a license under said Act until Friday, May 15th, when he desired to obtain a license for one day to have a game of baseball played in said park; that he applied to the defendant, the assessor of the District of Columbia, and that said license was refused; your relator says that if he carries on his business in said park aforesaid, and has games played therein and if not given the license aforesaid, he is subject to certain payments and penalties under section 47 of said act.

5th. Your relator further says that under said Act aforesaid he is entitled as matter of right to have issued to him a license for any day in the week for the purpose of using the said grounds leased by him for games of any kind to which he intends to charge an admission fee, and that said license has been without authority of law refused to him.

6th. Your relator further says that he leased said grounds for the purpose of carrying on said games aforesaid, and to charge admission to said games, and to use said park for profit or gain, and that he is ready and willing to pay the license therefor whenever he shall so desire to use the same; that heretofore he has been getting
3 a license for the day on which he desired to use said park for the purpose mentioned in said Act, but has not taken out a license for a period of one week; that it is his desire during the time that he leases the said park to again and again have games therein and charge admission therefor, and that he is entitled to be in a position, where if he applies for a license one shall be granted to him; and relator further says that it should not be necessary for him at any time that he desires a license to have to resort either to Court of law or equity to protect him in his rights given him under the statute, the said statute mentioned aforesaid is a mere license statute, object being to tax your relator when he engaged in the occupation mentioned in said statute, and no discretion is vested in the said defendant yet petitioner says said respondent has refused and still

refuses to give a license to your relator; your relator further says that it is desire- at least once a week or possibly oftener, during the present summer and fall, and possibly winter, to give exhibitions that require a license under said Act aforesaid, and that he is without remedy at law, other than by writ of mandamus to compel the said defendant to give to him the license when he shall demand the same; that he particularly desires a license for May 24th and May 31st; that in order to carry on the games aforesaid, it is necessary for him to make arrangements in advance and to make contracts long in advance of the day set, and it is absolutely necessary for him to know whether or not on the day named he will have the license aforesaid.

Wherefore, the premises considered, your relator prays:

4 1st. That the writ of mandamus may issue to the defendant, William P. Richards, commanding him to issue to your relator a license under said Act aforesaid, for such days of the week as your relator may request the same, and particularly for the 24th and 31st day of May, upon payment by your relator in advance of the license fee required.

2nd. That your relator may have such other and further relief as the nature of this petition may require.

SAMUEL S. EDMONSTON.

DANIEL W. BAKER,
WILLIAM E. LEAHY,
Attorneys for Relator.

Samuel S. Edmonston, Jr., being first duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, that the matters and things therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

SAMUEL S. EDMONSTON.

Subscribed and sworn to before me this 18th day of May, 1914.
[SEAL.]

CHARLES T. PECK, JR.,
Notary Public, D. C.

5

Rule to Show Cause.

Filed May 19, 1914.

* * * * *

Upon consideration of the petition for the writ of mandamus filed in the above entitled cause, it is by the Court, this 19th day of May, 1914,

Ordered that the said William P. Richards, assessor of the District of Columbia, show cause on or before 10 o'clock A. M. Friday, May 22nd, in Circuit Court No. 2, why the writ of mandamus should not issue as prayed for in said petition.

By the Court:

JOB BARNARD, *Justice.*

Answer.

Filed May 22, 1914.

* * * * *

Now comes the respondent and for answer to the petition herein filed respectfully shows to the Court as follows:

1, 2 and 3. He admits the allegations of Paragraphs 1, 2 and 3 of the said petition.

4. Respondent admits the allegations of fact contained in Paragraph 4 but denies the matters of law therein set forth. Further, respondent says that the license which the petitioner was refused was a license to conduct a public exhibition of baseball upon the said premises and that such exhibitions are forbidden by Section 16 of Article 16 of the Police Regulations of the District of Columbia, a valid regulation and passed with due authority of law. Said Regulation is as follows:

"SEC. 16. No owner, proprietor, lessee, tenant, or other person shall on the first day of the week, commonly called Sunday, in any theater or other public place of amusement, permit, allow or take part in any manner in any public exhibition of any entertainment, play, opera, circus, animals, gymnastics, games, dance or dances, or vaudeville performance of any kind, except the exhibition of moving or other pictures, vocal or instrumental concerts, or singing by a singer or singers, artist or artists, not in character costume, lectures and speeches: Provided, That nothing herein contained shall be held or construed to change, abrogate, or annul the regulations in force for the protection of the public decency, all of which shall be applicable to the performances allowed under the terms of this regulation."

5. Answering Paragraph 5, respondent says that the relator is not entitled to the license aforesaid "for any day in the week" in that he is not entitled to the said license for Sunday exhibitions of baseball, the same being forbidden as set forth in Paragraph 4 hereof, and defendant denies said license was refused without authority of law.

6. Answering Paragraph 6 respondent says that the license desired by the relator "at least once a week" was a license to give public exhibits of baseball on Sunday and the days therein particularly specified, to wit, May 24, and May 31, are Sundays for which the said relator desires a license to give a public exhibition of baseball, and that said exhibitions are forbidden by the Police Regulations as hereinbefore set forth. That the matters of fact set forth in said paragraph are immaterial, or if they be deemed material admits the same.

7 And having fully answered said petition respondent prays that the same may be dismissed.

WM. P. RICHARDS.

Assessor of the District of Columbia.

CONRAD H. SYME,

Att'y for Def'ts.

DISTRICT OF COLUMBIA, ss:

William P. Richards, having been first duly sworn, deposes and says that he is the Assessor of the District of Columbia, and has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and facts therein set forth as upon personal knowledge are true and those set forth as upon information and belief he believes to be true.

WM. P. RICHARDS.

Subscribed and sworn to before me this twenty-second day of May, 1914.

[SEAL.]

CARL A. MAPES,
Notary Public, D. C.

8

Demurrer.

Filed May 22, 1914.

* * * * *

The relator says that respondent's answer is bad in substance.

DANIEL W. BAKER,
WILLIAM E. LEAHY,
Attorneys for Relator.

One of the points to be argued at hearing of the above demurrer:

1st. The answer is not responsive to any matter set out in the petition.

2nd. That the answer does not deny any fact set out in the petition or show any reason why the mandamus must not issue.

Judgment.

Filed June 18, 1914.

* * * * *

Upon consideration of the petition filed by the United States at the relation of Samuel S. Edmonston, Jr., the return thereto and the demurrer filed to said return, it is by the Court this 18th day of June, A. D., 1914,

Ordered and adjudged that said demurrer to said return be, and the same is hereby sustained, and it is by the Court further

9

Ordered and adjudged that the said William P. Richards be, and he is hereby, commanded to issue to the relator Samuel S. Edmonston, a license under paragraph 24 of section 7 of the Act of July 1st, 1902, as lessee of said park situated at 15th Street and Bladensburg Road, for such days of the week as the said relator may request the same, and the said relator at the time of making said request to pay in advance the license fee required by said Act. It is further

Ordered and adjudged that the said relator recover his costs of this suit to be taxed by the clerk.

By the Court:

ASHLEY M. GOULD, *Justice.*

From this judgment William P. Richards, Assessor of the District of Columbia, Appeals in open Court to the Court of Appeals of the District of Columbia.

ASHLEY M. GOULD, *Justice.*

Assignment of Errors.

Filed July 9, 1914.

* * * * *

Now comes the defendant, by his counsel, and assigns for error in the above entitled cause the following:

10 1. The Court erred in sustaining the demurrer to the answer filed herein.

2. The Court erred in delivering a judgment requiring the defendant to issue a license to the relator as prayed in the said petition.

3. The Court erred in holding that the Commissioners of the District of Columbia were not empowered by law to enact Section 16 of Article 16 of the Police Regulations now in force in the District of Columbia under which Sunday baseball to which an admission fee is charged, is prohibited.

CONRAD H. SYME,
Attorney for Defendants.

Designation of Record.

Filed July 9, 1914.

* * * * *

The Clerk of the Court will please prepare transcript of the record for the Court of Appeals in the above entitled cause consisting of the following:

1. The petition filed herein.
2. The rule to show cause.
3. The answer of the defendant.
4. The demurrer to the answer.
5. The judgment sustaining the demurrer.
6. An appeal in open Court.
7. Assignment of errors.
8. This designation of the record.

CONRAD H. SYME,
Attorney for Defendants.

11 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 10, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 56918 at Law, wherein United States ex rel. Samuel S. Edmonston, Jr., is Petitioner and William P. Richards, Assessor of the District of Columbia, is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22d day of July, 1914.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2729. W. P. Richards, assessor, &c., appellant, vs. United States ex rel. Sam'l S. Edmonston, Jr. Court of Appeals, District of Columbia. Filed Jul- 27, 1914. Henry W. Hodges, Clerk.

Court of Appeals, District of Columbia.

COURT OF APPEALS
DISTRICT OF COLUMBIA

OCTOBER TERM, 1914. FILED

SEP-10-1914

No. 2728.

FREDERICK L. SIDMONS ET AL., APPELLANTS,

vs.

SAMUEL S. EDMONSTON, JR., APPELLEE.

No. 2729.

WILLIAM P. RICHARDS, ASSESSOR OF THE DISTRICT OF
COLUMBIA, APPELLANT,

vs.

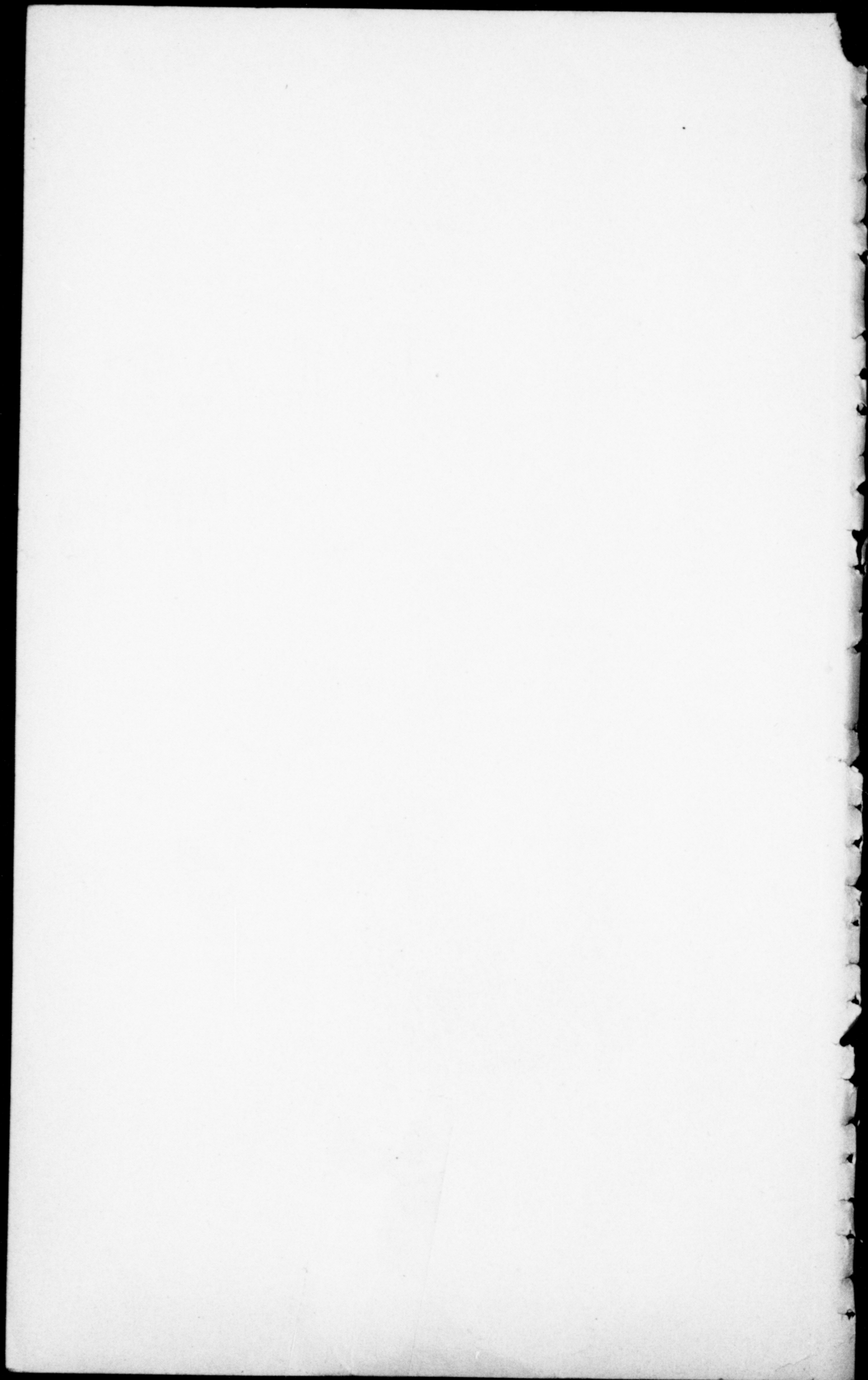
UNITED STATES ON THE RELATION OF SAMUEL
S. EDMONSTON, JR., APPELLEE.

BRIEF FOR THE APPELLANTS.

CONRAD H. SYME,

Corporation Counsel, D. C.,

Attorney for the Appellants.



Court of Appeals, District of Columbia.

OCTOBER TERM, 1914.

No. 2728.

FREDERICK L. SIDDONSON ET AL., APPELLANTS,

vs.

SAMUEL S. EDMONSTON, JR., APPELLEE.

No. 2729.

W. P. RICHARDS, ASSESSOR, ETC., APPELLANT,

vs.

UNITED STATES EX REL. SAM'L S. EDMONSTON, JR.,
APPELLEE.

BRIEF FOR THE APPELLANTS.

I.

Statement.

On May 15, 1914, the appellee filed his bill of complaint in the Supreme Court of the District of Columbia against the Commissioners of the District of Columbia by name,

Richard Sylvester, Major and Superintendent of Police, and Wm. P. Richards, Assessor, in which he averred that he was the lessee and proprietor of a certain baseball park in the District of Columbia which was used as a place of amusement, upon which baseball and other games were conducted on secular days and Sundays, and to which an admission fee was charged, and for the use of which a license fee of five dollars (\$5.00) was charged, under the general license act in force in the District of Columbia, for each day it was so used. He further averred that he had made all arrangements for a baseball game to be played on this lot on Sunday, May 17, 1914, to see which admission was to be charged, and had applied to the Assessor of the District, Wm. P. Richards, for a license for the same, but that a license had been refused on the ground that playing of baseball on Sunday, to see which an admission fee was charged, was in violation of the existing police regulations of the District of Columbia. He further averred that the Major and Superintendent of Police had ordered that if the game was played those persons participating therein should be arrested. He prayed that the defendants be enjoined from interfering with or disturbing him from conducting baseball games in his park on Sunday and that a mandatory injunction should be issued commanding the Assessor to give him the license requested. To this bill the defendants filed an answer admitting the facts as set forth in the bill of complaint, but justifying the refusal to issue the license on the ground that Sunday baseball as a public exhibition was prohibited by Article XVI of the Police Regulations of the District of Columbia.

The appellee, out of an abundance of caution, also on the 19th day of May, 1914, filed in the same court his petition for a writ of mandamus to compel the Assessor, Richards, to issue to him licenses for baseball games on the 24th and 31st days of May, which were Sundays, upon which petition a rule to show cause was issued, and substantially the same

answer was filed as to the bill of complaint, and a demurrer was filed to the answer.

These causes were consolidated for hearing in the court below and were heard upon bill and answer in the equity case, and upon the demurrer to the answer in the mandamus proceedings, the court sustaining the demurrer in the latter case, and in the former case entering an order restraining the defendants, as prayed in the original bill, on the ground that the appellee was entitled to a license under the general license law, as the Commissioners of the District of Columbia were without authority from Congress to pass section 16 of article XVI of the Police Regulations of the District of Columbia. From this order and from the judgment entered upon the sustaining of the demurrer in the mandamus proceedings appeals to this court were noted in open court and duly perfected.

As no question of fact is involved in the record of either case, and the legal question to be determined is the same, the appellants will ask to have these cases considered together in this court.

II.

Assignment of Errors.

1. The court erred in granting the plaintiff an injunction restraining the defendants as prayed in the bill of complaint.

2. The court erred in sustaining the demurrer to the answer filed in the mandamus proceedings.

3. The court erred in holding that the Commissioners of the District of Columbia were not empowered by law to enact section 16 of article XVI of the Police Regulations now in force in the District of Columbia, under which Sunday baseball, to which an admission fee is charged, is prohibited.

ARGUMENT.

1892
27 Stat.
394

The authority of the Commissioners of the District of Columbia to enact regulations having the force of law with reference to Sunday observance in the District of Columbia is found in a joint resolution of Congress approved February 26, 1894. Section 2 of this resolution provides:

"That the Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations, in addition to those already made under act of January twenty-sixth, eighteen hundred and eighty-seven, as they may deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the District of Columbia."

The act of January 26, 1887, therein referred to, authorized the Commissioners to make police regulations for the inspection of pawnbroking and junk dealing; the storage of inflammable substances; the location of stands for licensed vendors on the public streets; the disposition of carriages and vehicles on the streets and public places; to regulate the charges for hacks and hackney carriages; to prohibit the conducting of droves of animals upon the streets; to regulate the keeping and running at large of dogs and fowls; to prohibit the deposit upon the streets of litter of various kinds; to regulate or prohibit loud noises with horns and other instruments, and the use of fireworks, and to regulate the movements of vehicles on the public streets.

In accordance with the authority of section 2 of the joint resolution referred to, the Commissioners, in 1907, passed section 16 of article XVI of the Police Regulations, which reads as follows:

"No owner, proprietor, lessee, tenant, or other person shall on the first day of the week, commonly called Sunday, in any theatre or other public place

of amusement permit, allow, or take part in any manner in any public exhibition of any entertainment, play, opera, circus, animals, gymnastics, game, dance or dances, or vaudeville performance of any kind, except the exhibition of moving or other pictures, vocal or instrumental concerts, or singing by a singer or singers, artist or artists not in character costume, lectures and speeches: *Provided*, That nothing herein contained shall be held or construed to change, abrogate, or annul the regulations in force for the protection of the public decency, all of which shall be applicable to the performances allowed under the terms of this regulation."

The only general law with reference to Sunday observance, either as a day of rest or otherwise, that was then supposed to be in force in the District of Columbia was the act of Assembly of Maryland of 1723, chapter 16, which act the Court of Appeals of the District of Columbia, on January 21, 1908, in the case of the District of Columbia *vs.* Robinson, 30 App. D. C., 283, held to be not only obsolete in this District, but not legally enforceable under our present constitutional form of government, and so much of it as prohibited labor on Sunday was impliedly repealed by various acts of Congress applying to this District and prohibiting particular kinds of labor on Sunday. In view of the proximity of the date of this decision and that of the adoption of the present regulation, it is probable the Commissioners passed the present regulation in anticipating this decision and the absence of any general law regulating Sunday observance. In fact, if I may go out of the record, I find that on September 25, 1907, the then corporation counsel was of the opinion that under section 2 of the joint resolution referred to, "a regulation which protects the comfort and quiet of all persons on Sunday may be within the grant of power and may be justified as a police regulation." The regulation in question was thereupon passed and has been observed without serious question to the present time.

There is doubt as to whether under the terms of the Joint Resolution Congress intended to invest the Commissioners with the power of the regulation of the observance of Sunday in the District of Columbia. In the presence of doubt upon the subject the then Commissioners were justified in feeling that it was their duty to pass such regulations for Sunday observance as were usual in municipalities in the interest of good order and the public comfort, and in line with rules of conduct which had been observed, more or less, for many centuries, and which the entire civilized world recognizes as essential to the physical and moral well-being of society.

It is difficult for any of us to turn his back upon traditions which have become more or less a part and parcel of our mental attitude and moral consciousness. The past has its tremendous influence upon us. It is well-nigh impossible to disregard the touch of all that has gone before.

Whatever god we may worship, under whatever sky we may be, even on the bosom of the ocean, where the artificial divisions of time are but little noted in the monotony of sea and sky, a peculiar significance still attaches to the day we know as Sunday, and all of us, somehow, feel that it is a day different from other days. Its very name is of pagan origin and it was sacred to the creative influence of the sun centuries before the shepherds watched their flocks by night on the hills encircling Bethlehem.

Whatever may have been the uncertainties as to the duration of the ancient year, whether measured by solar, lunar, or terrestrial revolutions, the day in all ages has been reckoned with certainty and the week with almost equal uniformity. These divisions of time have been constant, certainly among all Eastern peoples. Whether the origin of the week as consisting of seven days was taken from the Mosaic account of the creation, whether it is of Egyptian, Assyrian, or Chaldean origin; or whether the names of its days were taken from the seven planets known to the ancients, it still remains that the week has always been of

seven days and that up to the time of the Christian era the seventh day had been one of rest. Nothing as lasting as this fact could have been much less than the truth that the experience of mankind has demonstrated, that their moral, physical, and spiritual welfare demanded one day out of every seven to be devoted to rest from the strife and turmoil of daily life.

The Hebrew Sabbath, as old as the Semite people, and the Christian Sunday, are indissolubly connected. The significance of the Sabbath of the Jews as a day of rest and worship assumed an added significance in the Sunday of the Christian world, and gave to it a doubly religious aspect.

Whatever may be the historical fact of the Resurrection, the spiritual fact remains that the words and the works of a young Jewish prophet, who spake as never man spake, resurrected from a dead past and a materialistic present the reality and absolute substance of true existence. He was incarnate Truth, and let us hope immortal Life, and endless, boundless Love.

The Semitic race had always been a monotheistic people. They had one God, and he was a spiritual being, and one day in each week they ceased to labor and turned to the contemplation of that spiritual concept which they believed had led them through wave and wilderness from the Nile to the Jordan; and so after the Christian era, the spiritual idea of the ancient Hebrew Sabbath attached itself to the Christian Sunday. Ignatius, Eusebius, Pliny, Justin Martyr, and other ancient writers chronicled the observances of the day by early Christians. The first legal recognition of Sunday was in the Constitution of Constantine, about 321 A. D., after Christianity had become a state religion. Under this constitution both work and pleasure were prohibited on that day. The gates of the circus were closed and the theatres were silent. From that time to the present in every country and among every people where the Christian religion has been adopted, statutes have been enacted recognizing the day and its peculiar significance.

In England legislation on the subject began 200 years before the Norman Conquest, and continues until the present time. With the Reformation the statutory recognitions and compulsory observances of Sunday may be said to really have commenced in English law. In the reigns of Edward VI and Elizabeth, all except necessary work was prohibited and attendance at church was made compulsory. The Long Parliament made even "walking vainly and profanely on that day" an offense. A statute in the time of Charles I prohibited sports or pastimes on that day. In the 29th year of Charles II a comprehensive statute on Sunday observance was enacted, parts of which are enforceable in England to this day, and it has formed the basis of much distinctly modern legislation in this country. As early as the 21st year of George III, any place of amusement to which admittance was charged which was open on Sunday, was made a disorderly house, and the advertising of such amusement was visited with heavy penalties, and as late as the year 1875 penalties were imposed under this act. It will thus be seen that from the very source from which we take our law, sprung this particular character of legislation.

The prohibition of secular business on Sunday for the purpose of promoting good order and the protection of the comfort, happiness, and health of the people, has been so broadly and frequently sustained, that neither its constitutionality nor its propriety could well be questioned.

The Supreme Court of the United States, in the case of *Hennington vs. Ga.*, 163 U. S., 299, in passing upon the legality of an act prohibiting the running of freight trains on Sunday, illustrates the attitude both of the lawmaking and the judicial power on this subject very clearly in the following language:

"The legislature having, as will not be disputed, power to enact laws to promote the order and to secure the comfort, happiness and health of the people, it was within its discretion to fix the day when all labor, within the limits of the State, works of neces-

sity and charity excepted, should cease. It is not for the judiciary to say that the wrong day was fixed, much less that the legislature erred when it assumed that the best interests of all required that one day in seven should be kept for the purposes of rest from ordinary labor. The fundamental law of the State committed these matters to the determination of the legislature. If the law-making power errs in such matters, its responsibility is to the electors, and not to the judicial branch of the government. The whole theory of our government, Federal and State, is hostile to the idea that questions of legislative authority may depend upon expediency or upon opinions of judges as to the wisdom or want of wisdom in the enactment of laws under powers clearly conferred upon the legislature. The legislature of Georgia no doubt acted upon the view that the keeping of one day in seven for rest and relaxation was 'of admirable service to a State considered merely as a civil institution.' 4 Bl. Com., 63. The same view was expressed by Mr. Justice Field in *Ex parte Newman*; 9 California, 502, 519, 528, when, referring to a statute of California relating to the Sabbath day, he said: 'Its requirement is a cessation from labor. In its enactment, the legislature has given the sanction of law to a rule of conduct, which the entire civilized world recognizes as essential to the physical and moral well-being of society. Upon no subject is there such a concurrence of opinion, among philosophers, moralists, and statesmen of all nations, as on the necessity of periodical cessation from labor. One day in seven is the rule, founded in experience and sustained by science. * * * The prohibition of secular business on Sunday is advocated on the ground that by it the general welfare is advanced, labor protected, and the moral and physical well-being of society promoted.'

"The same principles were announced by the Supreme Court of Georgia in the present case. As the contention is that that court erred in not adjudging the statute in question to be unconstitutional, it is appropriate that the grounds upon which it proceeded should fully appear in this opinion. That court, speaking by Chief Justice Bleckley, said: 'There can

be no well-founded doubt of its being a police regulation, considering it merely as ordaining the cessation of ordinary labor and business during one day in every week; for the frequent and total suspension of the toils, cares and strain of mind or muscle incident to pursuing an occupation or common employment, is beneficial to every individual, and incidentally to the community at large, the general public. Leisure is not less essential than labor to the well-being of man. Short intervals of leisure at stated periods reduce wear and tear, promote health, favor cleanliness, encourage social intercourse, afford opportunity for introspection and retrospection, and tend in a high degree to expand the thoughts and sympathies of people, enlarge their information, and elevate their morals. They learn how to be, and come to realize that being is quite as important as doing. Without frequent leisure, the process of forming character could only be begun; it could never advance or be completed; people would be mere machines of labor or business—nothing more. If a law which, in essential respects, betters for all the people the conditions, ~~sanitary, social, and individual~~, under which their daily life is carried on, and which contributes to insure for each, even against his own will, his minimum allowance of leisure, cannot be rightfully classed as a police regulation, it would be difficult to imagine any law that could.'

"That court further said: 'With respect to the selection of the particular day in each week which has been set apart by our statute as the rest day of the people, religious views and feelings may have had a controlling influence. We doubt not that they did have; and it is probable that the same views and feelings had a very powerful influence in dictating the policy of setting apart any day whatever as a day of enforced rest. But neither of these considerations is ~~destructive of the police nature and character~~ of the statute. If good and sufficient police reasons underlie it, and substantial police purposes are involved in its provisions, these reasons and purposes constitute its civil and legal justification, whether they were or not the direct and immediate motives

which induced its passage, and have for so long a time kept it in force. Courts are not concerned with the mere beliefs and sentiments of legislators, nor with the motives which influence them in enacting laws which are within legislative competency. That which is properly made a civil duty by statute is none the less so because it is also a real or supposed religious obligation; nor is the statute vitiated, or in anywise weakened, by the chance, or even the certainty, that in passing it the legislative mind was swayed by the religious rather than by the civil aspect of the measure. Doubtless it is a religious duty to pay debts, but no one supposes that this is any obstacle to its being enacted as a civil duty. With few exceptions, the same may be said of the whole catalogue of duties specified in the Ten Commandments. Those of them which are purely and exclusively religious in their nature cannot be, in so far as they involve conduct as distinguished from mere operations of mind or states of the affections. Opinions may differ, and they really do differ, as to whether abstaining from labor on Sunday is a religious duty; but whether it is or is not, it is certain that the legislature of Georgia has prescribed it as a civil duty. ~~The statute can fairly and rationally be treated as a legitimate police regulation, and thus treated, it is a valid law.~~ There is a wide difference between keeping a day holy as a religious observance and merely forbearing to labor on that day in one's ordinary vocation or business pursuit.' "

In the above case the court quotes the case of *Bloom vs. Richards*, 2d Ohio State, 387, in which Judge Thurman, delivering the unanimous judgment of the Supreme Court of Ohio, said:

"We are, then, to regard the statute under consideration as a mere municipal or police regulation, ~~whose validity is neither strengthened nor weakened by the fact that the day of rest it enjoins is the Sabbath day.~~ Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so

fixed as to happen at regularly recurring intervals, are too obvious to be overlooked. It was within the constitutional competency of the General Assembly to require the cessation of labor, and to name the day of rest."

The text-books amply justify the statement that municipalities have authority to regulate the observance of the Sabbath under grants of power under a general welfare clause.

II Dillon Municipal Corporations, sec. 719 and notes.

I Abbott, Municipal Corporations, pp. 248-9, notes.

27 A. & E. Enc. Law, 2d ed., 392 and notes.

28 Cyc., 743 and notes.

Tiedemann on Municipal Corporations.

"Sunday observance may become a proper subject for municipal police regulation, either under the general powers as to public safety, welfare, health, etc., or under an express or implied grant of power for the purpose." 28 Cyc., 743, 705.

Valid Sunday ordinances under general grants of power are found in the following cases:

"To maintain the peace, good government and orders of the city, and the trade, commerce, and manufactures thereof, as the council may deem expedient, not repugnant to the constitution and laws of the State." *St. Louis vs. Cofferrata*, 24 Mo., 330.

"To establish such by-laws as may tend to preserve the quiet, safety, peace, and good order of the inhabitants." *City Council vs. Benjamin*, 2 Strobbart (S. Car.).

"The power is collected from the general powers delegated to maintain the *good order* and government of the city." *Karwisch vs. Atlanta*, 44 Ga., 204, 207.

"To regulate the police of a city or village and pass and enforce all necessary police ordinances." *McPherson vs. Chebause*, 114 *Id.*, 46, 49, 50, 51.

"To pass all such ordinances and laws as may be expedient and necessary for the preservation of the

24 Md. 262

public peace and *morals*." *Theisen vs. McDavid*, 34 Fla., 440, 445, ascribed to "morals," 446; 26 L. R. A., 234.

"To serve the general health of the inhabitants, and to prevent and remove nuisances." *Nashville vs. Linck*, 12 Lea (80 Tenn.), 499, 503. "To pass all ordinances necessary for the health, convenience and safety of the citizens," 503.

"Conceding that the city may have the authority by ordinance to prohibit the carrying on of all business or occupations on Sunday * * * upon the grounds that thereby the peace, good order, good government and welfare of its inhabitants will be promoted," etc. The ordinance in question (prohibiting sale of clothing) is class legislation. *Denver vs. Bach*, 26 Colo., 530, 532.

"To maintain the cleanliness and salubrity of said city; to secure safety and convenience of passing in the streets; * * * to regulate everything that relates to bakers, butchers, tavern-keepers, or of grog-shops, and other persons keeping public houses; * * * and to make other regulations which may contribute to the better administration of the affairs of said corporation, as well as the maintenance of the police, tranquillity and safety of the city." Held, ample authority for the enactment of an ordinance forbidding sale of liquor on Sundays. *Gabel vs. Houston*, 29 Tex., 336, 342, 345, 346.

There can be no doubt if the Commissioners of the District of Columbia have authority to pass the regulation it is broad enough to prohibit exhibition games of baseball on Sunday to which admission is charged.

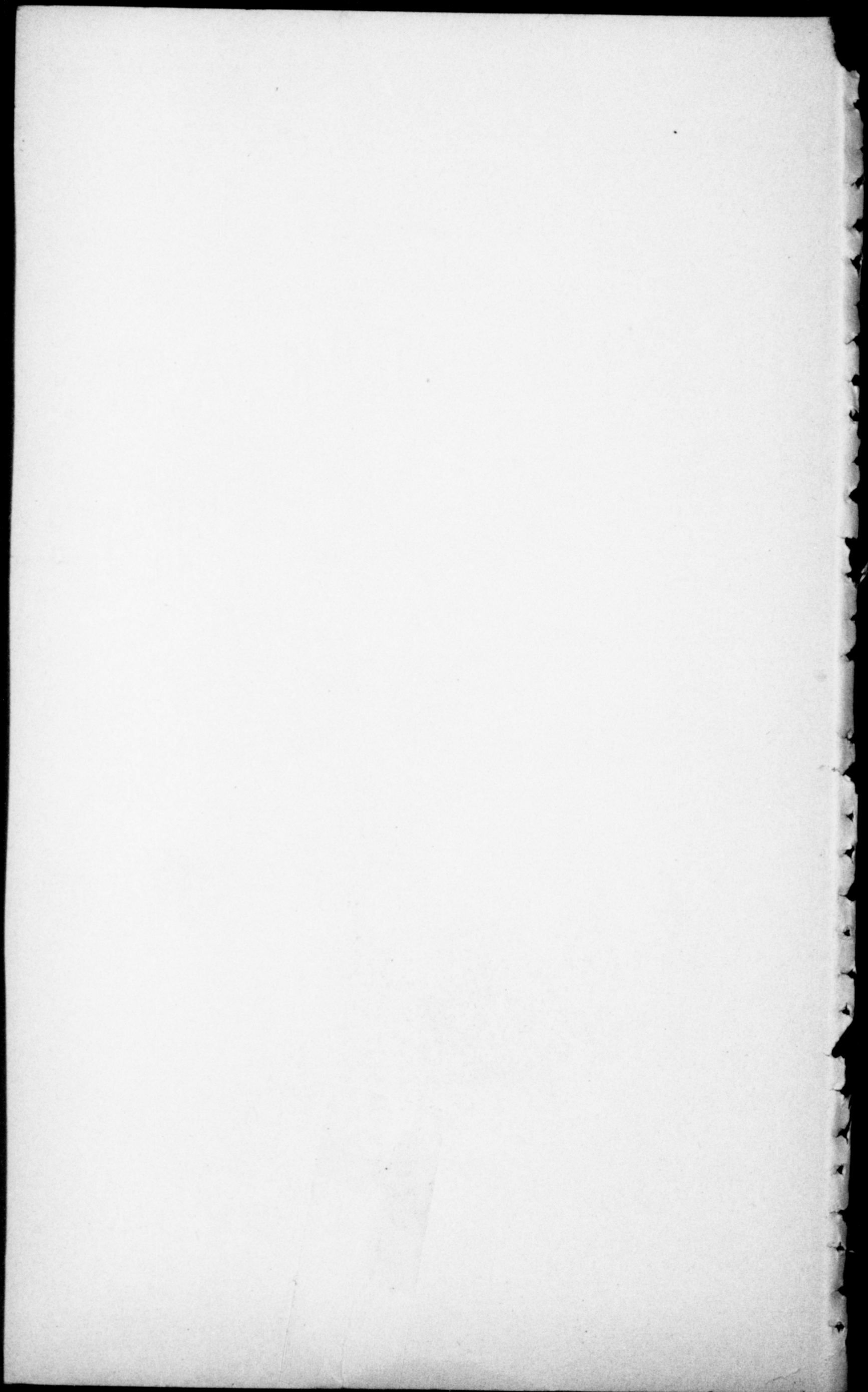
The population of the city of Washington is cosmopolitan. It is representative not only of all of the States of the Union, but in some capacity, official or otherwise, of all of the countries of the globe. To it come people from every clime and of every character of religious belief. It is peculiarly a national city, and one as to which it is difficult for either Congress or the Commissioners to enact satisfactory rules of conduct for Sunday observance. It is gratifying to know,

however, that although the decision of the court below left the District of Columbia without any general law for Sunday observance, yet nothing has occurred to occasion any general complaint that there has been desecration of the day.

Respectfully submitted,

CONRAD H. SYME,
Corporation Counsel,
Attorney for Appellants.

[26292]



Court of Appeals, District of Columbia

OCTOBER TERM, 1914. COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

No. 2728.

OCT.-2--1914

FREDERICK L. SIDDONS, *et al.*, *Appellants*,

Henry W. Hodges.
Clerk.

vs.

SAMUEL S. EDMONSTON, JR., *Appellee*.

No. 2729.

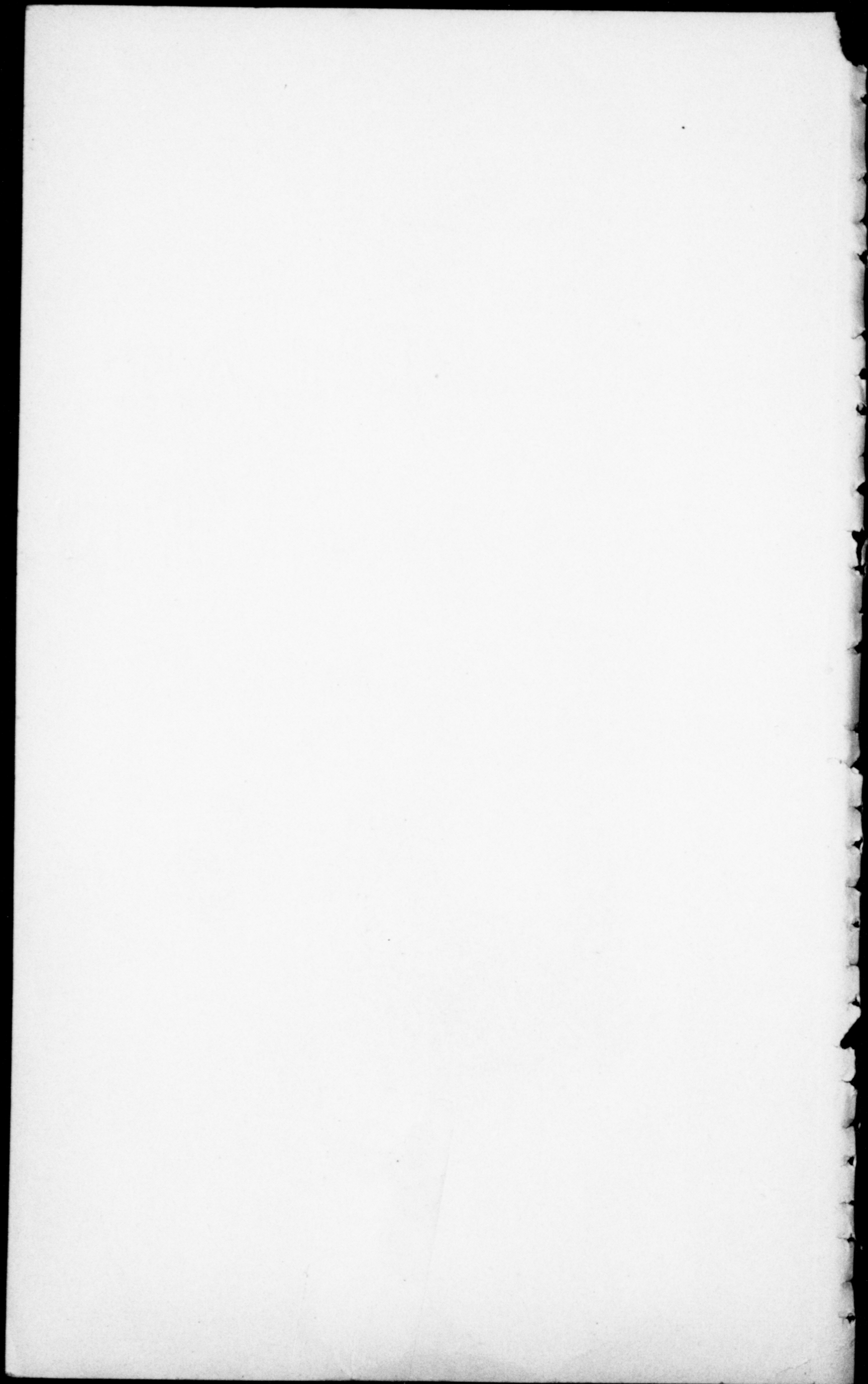
WILLIAM P. RICHARDS, *Assessor of the District of Co-*
lumbia, Appellant,

vs.

UNITED STATES ON THE RELATION OF SAMUEL S. ED-
MONSTON, JR., *Appellee.*

BRIEF ON BEHALF OF APPELLEE.

DANIEL W. BAKER,
WILLIAM E. LEAHY,
Attorneys for Appellee.



Court of Appeals, District of Columbia

OCTOBER TERM, 1914.

No. 2728.

FREDERICK L. SIDDONS, *et al.*, *Appellants*,

vs.

SAMUEL S. EDMONSTON, JR., *Appellee*.

No. 2729.

W. P. RICHARDS, *Assessor, etc.*, *Appellant*,

vs.

UNITED STATES EX REL. SAM'L. S. EDMONSTON, JR.,
Appellee.

BRIEF ON BEHALF OF APPELLEE.

These are two cases involving the right of the plaintiff to receive a license for an amusement park under the general license law, the same being an Act of Congress, approved July 1, 1902. In the general Appropriation Act for the fiscal year ending June 30, 1903, are contained the personal tax law and the license law at present in effect in the District of Columbia, and reading as follows:

"That owners or lessees of grounds used for horse racing, tournaments, athletic sports, baseball, football, polo, golf, and kindred games, or where feats of horsemanship are performed, to which admission fees are charged or which are used for profit or gain, directly or indirectly, shall pay a license tax of twenty dollars per week or five dollars per day."

"That owners or lessees of ground or premises used for picnics or lawn fetes, or resorts where theatrical or musical attractions or other amusements are presented, to which admission fees are charged or which are used for profit or gain, directly or indirectly, and which are not taxed under any other paragraph of this section, shall pay a license tax of three dollars per day or ten dollars per week and five dollars additional for each subsequent consecutive week, or for an annual license a tax of one hundred dollars."

An examination of Section 7 shows that this Section provides for a license tax upon certain occupations carried on in the District of Columbia; that for some of these licenses are issued as matter of absolute right whereas for others the granting of a license is within the discretion of the Commissioners of the District of Columbia, as would appear from paragraph 14, others in the discretion of the Major and Superintendent of the Police of the District of Columbia, as is shown by paragraph 32. Other licenses are given to parties applying as a matter of right. In these cases there is no dispute that the plaintiff is the lessee of grounds used for baseball, etc., to which he intends to charge a fee, and, therefore, must, under paragraph 24 just cited, be licensed and taxed \$20.00 per week or \$5.00 per day. This license gives to the licensee the right to carry on the business for which the license is issued, and paragraph 24 gives him the right to carry on this business

any day during the week because he can obtain a license for one day or for the whole week, the week being seven days.

Reading the Act as we read it, it is submitted that there can be no doubt but that the appellee was entitled to a mandamus to obtain his license, being so entitled to a mandamus, he was also entitled to be protected in his property right by the preliminary restraining order and final decree in the Equity cause. No question is raised as to the jurisdiction of the Court of Equity by the appellants, that jurisdiction is well settled.

The case of *Dobbin vs. Los Angeles*, 195 U. S., 223, is directly in point. The fact that the effect of the restraining order may prevent an attempted prosecution in the Police Court under certain ordinances which are here attacked in no way affects the jurisdiction of a court of equity. The plaintiff is without remedy at law. In other words, his remedy by mandamus may award to him a license and he is entitled, pending the proceedings in mandamus or the proceedings on appeal in mandamus or at any time, to have his property protected by the Court of Equity. The remedy at law is not adequate.

Plaintiff, however, has the right to enjoy his property under the laws in force and, if he is deprived of that right, then equity can give him relief, for equity relieves against a continued trespass; it relieves against acts where the damage is uncertain; it relieves against acts that are annoying and where remedy at law would merely give damages. To illustrate: abatement of a nuisance. The mere fact that acts, desired to be restrained, may if restrained prevent the municipality from attempting to exercise its powers under a void regulation in no way affects this jurisdiction. Whether my property rights are continually interfered with by persons without authority or by per-

sons under the color of authority is immaterial. A court of equity protects the property rights and does not look to see whether or not by protecting them they are enjoining criminal prosecution or not. It has been well settled that a court of equity has the power to restrict by injunction a municipality from instituting criminal proceeding either under color of individual ordinance for the purpose of compelling the relinquishment of property right, or from preventing a person from enjoying the use of his property under the law.

Dobbins vs. City of Los Angeles, 195 U. S., 223.

Southern Exp. Co. vs. Ensley, 116 Fed., 756.

Mobile vs. Louisville & N. R. Co., 84 Ala., 115.

Montgomery vs. Louisville & N. R. Co., 84 Ala., 127.

Atlanta vs. Gate City Gaslight Co., 71 Ga., 106.

Paulk vs. Sycamore, 104 Ga., 24.

Skinkle vs. Covington, 83 Ky., 420.

Louisville Trustees vs. Gray, 1 Litt. (Ky.), 147.

Under recent decisions defining what we call governmental function as applied to the District of Columbia, it might be questioned as to whether or not the District of Columbia would be liable, if the police and the District should attempt to interfere with the lawful conduct of business of the plaintiff. It has been held in cases similar to the one at bar that persons have no remedy against a municipality for wrongful acts of employees or for the destruction of business or property.

Bond vs. City of Royston, 130 Ga., 646; 18 L. R. A., 409.

A court of equity has power to restrain by injunction a municipality from instituting criminal proceedings, threat-

ened under color of an invalid ordinance, for the purpose of compelling the relinquishment of a property right.

Davis & F. Mfg. Co. vs. Los Angeles, 189 U. S., 207, L. Ed., 778, 23 Sup. Ct. Rep., 498.

Central Trust Co. vs. Citizens' Street R. Co., 80 Fed., 225, 82 Fed., 1.

Regan vs. Farmers' Loan & T. Co., 154 U. S., 362, 38 L. Ed., 1014, 4 Inters. Com. Rep., 560, 14 Sup. Ct. Rep., 1047.

Southern Exp. Co. vs. Ensley, 116 Fed., 756.

Louisiana State Lottery Co. vs. Fitzpatrick, 3 Woods, 222, Fed. C. No. 8, 541.

Springhead Spinning Co. vs. Riley, L. R., 6, Eq. 558.

Osborn vs. Bank of U. S., 9 Wheat., 738, 6 L. Ed., 204.

Wood vs. Brooklyn, 14 Barb., 425.

Manhattan Iron Co. vs. French, 12 Abb. N. C., 446.

Rushville Natural Gas. Co., 132 Ind., 575, 15 L. R. A., 321, 28 N. E., 853.

Davis vs. Fasig, 128 Ind., 271, 27 N. E., 726.

Platte & D. Canal & Mill Co. vs. Lee, 2 Colo. App., 184, 29 Pac., 1036.

Smith vs. Bangs, 15 Ill., 399.

Baltimore vs. Radecke, 49 Md., 218, 33 Am. Rep., 239.

Cape May & S. L. R. Co. vs. Cape May, 35 N. J. Eq., 419.

Los Angeles City Water Co. vs. Los Angeles, 103 Fed., 711.

Atlanta vs. Gate City Gaslight Co., 71 Ga., 106.

Austin vs. Austin City Cemetery Asso., 87 Tex., 330, 47 Am. St. Rep., 114, 28 S. W., 528.

Mobile vs. Louisville & N. R. Co., 84 Ala., 115, 5 Am. St. Rep., 342, 4 So., 105.

Smyth vs. Ames, 169 U. S., 466, 517, 42 L. Ed., 819, 838, 18 Sup. Ct. Rep., 418.

Detroit vs. Detroit Citizen's Street R. Co., 184 U. S., 368, 378, 46 L. Ed., 592, 600, 22 Sup. Ct. Rep., 410.

It is not enough that the plaintiff has a remedy at law. It must be as efficient and as prompt in its administration as the remedy in equity.

Boyce vs. Grundy, 3 Pet., 210, 7 L. Ed., 655.

Walla Walla vs. Walla Walla Water Co., 172 U. S., 1, 12, 43 L. Ed., 341, 346, 19 Sup. Ct. Rep., 77.

Phoenix Mut. L. Ins. Co. vs. Bailey, 13 Wall., 616, 621, 20 L. E., 501, 503.

Kilbourn vs. Sunderland, 130 U. S., 505, 514, 32 L. Ed., 1005, 1008 (9 Sup. Ct. Rep., 594).

Tyler vs. Savage, 143 U. S., 79, 95, 36 L. Ed., 82, 88, 12 Sup. Ct. Rep., 340, 2 Story Eq. Jr., 928.

Now it is respectfully submitted that under the license law of the District of Columbia, the plaintiff is entitled to his license, and from the authorities here cited is entitled to his right of protection.

An objection to the granting of the license to appellee raised is that the day for which the license is given is Sunday, the Lord's Day, and no license should be issued on that day, but it is respectfully submitted that under our Federal Government there is no such thing as the Lord's Day. That the Sunday known as a day of rest is a civil institution and to be viewed from a secular not a religious standpoint, for Federal Constitution Article 1, of the Amendments provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,

or of the press; or of the right of the people peaceable to assemble, and to petition the Government for a redress of grievances."

Therefore, Congress can not pass any law respecting the establishment of religion, or prohibiting free exercise thereof, nor delegate to its agent, the District of Columbia, the right to make any rules or regulations respecting the establishment of religion, and prohibiting free exercise thereof. So that Congress itself can pass no law providing that such and such acts shall be done by persons by reason of the fact that Sunday is the Lord's Day. Nor can it by reason of that fact enact that such and such acts shall not be done. The fact that Sunday has been a holiday throughout the Christian world has led many States, and in some instances Congress, to prohibit the doing of certain acts on this day, as for instance, selling liquor. See Act approved March 4, 1913, Act of February 25, 1897, requiring pool and billiard rooms to be closed on Sunday, and the Act forbidding shooting and carrying guns on Sunday, approved June 15, 1878.

Whether or not Congress can pass any law prohibiting a person from enjoying himself in a lawful manner on Sunday is an exceedingly nice question, but is one that we do not have to stop to consider here. That Congress can and has, and that the States can and have passed laws making Sunday the first day of the week a day of rest and prohibiting labor thereon is admitted, and if any person performs labor claiming that it was by reason of religious conviction, this has been held to be no defense.

If Congress has no power to prohibit one from enjoying himself in a lawful manner on Sunday, then it is not necessary to consider whether or not the District of Columbia itself has the authority to pass or can pass any regulation. If Congress is unable by reason of Federal enactment to

prevent this reasonable enjoyment its agents can not in any way prevent it. It, however, is submitted as an elementary proposition of law that prohibition from labor on Sunday is a matter of legislative not municipal control and there is in the District of Columbia no general law requiring cessation of labor on Sunday the first day of the week. Both of these questions are decided by this Court in the case of the District of Columbia vs. Robinson, reported 30 D. C. Appeals, 283.

The history of legislature on this subject shows that Congress itself is the proper body to act and not the District of Columbia. No one has ever been prosecuted to conviction in the District of Columbia when properly defended for violating any ordinance prohibiting cessation of certain work on Sunday. Parties have been convicted for selling liquor on Sunday under the Act of Congress. The question involved in this case here arose in the case of District of Columbia vs. Salmon, except in this, that in Salmon's case, Salmon had a license and was proceeded against under the alleged ordinance here in question promulgated by the Commissioners of the District. The admission here in this case is somewhat unique. The municipality apparently seeks to refuse appellee a license in order that he may be found carrying on a baseball game on Sunday without a license, thereby making him subject to the penalties of the Act of Congress in carrying on a game without a license and without any regard for the day of the week on which the game is carried on. As the appellee is entitled to a license as a matter of right, and as it would be a legal wrong on the part of the municipality to refuse him that license, the court here must protect him and prevent him from being put in the situation of violating the law when he has done everything himself to comply with that law. That the prohibition of cessation of labor on Sunday is a mat-

ter of legislative not municipal regulations is not only settled by the Robinson case heretofore mentioned, but also by the following cases:

Hemington vs. Georgia, 163 U. S., 299.

Petit vs. Minn., 177 U. S., 164.

Ex parte Nernan, 9 Cal., 502.

Ex parte Andrews, 18 Cal., 679.

State vs. Dolan, 13 Ohio, 693.

State vs. Powell, 58 Ohio State, 324.

State vs. Nesbit, 8 Kan. App., 104.

In order to fully cover the questions involved, it becomes necessary to consider not only whether Congress can, but whether Congress has delegated to the District of Columbia any authority that would permit it to make an ordinance prohibiting the playing of baseball on Sunday. The exact authority of Congress and the District of Columbia the representative municipality, to make *usual and ordinary regulations* has been matter of judicial decision in this jurisdiction. It may be laid down to be law that the Congress of the United States is the legislative body for the District of Columbia; that it has no right to delegate a legislative authority to its agent, the municipality, and that any attempt to so delegate, would be void; and where the municipality attempts to exercise legislative authority, such exercise is invalid not only because such authority can not be given to it, but because such authority has not been given to it. The municipality would have no authority to pass a law regulating the selling of liquor, or regulating the times in which barrooms should be kept open. It has no authority to provide for the statute of limitations for causes of action, or for closing of barber shops (the decision of Judge Pugh of the Police Court from which no Writ of Error was taken). In other words, it can not legislate, it can only regulate.

The power of the Commissioners of the District of Columbia is provided for in the several Acts of Congress of the United States, Act of January 26, 1887, enumerating said powers in ten sections. Act of February 26, 1892, revoking the license of theaters and other public buildings of amusements unless the persons holding licenses should within ten days comply with certain regulations for public peace prescribed by the Commissioners of the District of Columbia, the second section of this Act gave to said Commissioners the authority "To make and enforce all such reasonable and usual police regulations, in addition to those already made under Act of January 25, 1887, as they may deem necessary for the protection of life, limb, health, comfort and quiet of all persons, and the protection of all property within the District of Columbia."

By the Act of June 30, 1906, further authority was given to the Commissioners to make and enforce the usual and reasonable police regulation as they may deem necessary for the regulation of firearms, projectiles, explosives and weapons of any kind in the District of Columbia.

There are also special acts giving them power to make rules and regulations for pawnbrokers, in relation to keeping animals within the District, and in relation to impounding dogs. Nowhere do you find them given the right, however, unless specified in a particular statute to require licenses or levy taxes. The Commissioners of the District have nothing whatsoever to do with the question of right of the petitioner to the license sought in this cause, and they have no right to make any rules or regulations affecting the use of the license, unless it is necessary to make them for the purpose of life, limb, health, comfort, and quiet of all persons. The limitations put on the District of Columbia in these several cases have again and again been decided by this court. In the case of *Kerr vs. Ross*, 5 Ap-

peals D. C., 241, the court, speaking of the authority of the Commissioners of the District, say:

"The legislative power of the District of Columbia is vested solely in Congress. The District itself is a municipal corporation, and its governing body of officers, the Commissioners, exercise powers under supreme control of Congress, analogous to those ordinarily delegated to the mayor and council of the municipal corporations organized generally under the laws of the States.

"Metropolitan R. R. Co. vs. D. C., 132 U. S., 1, 9.

"The principle of law is thoroughly well established that powers entrusted to the governing bodies of municipal corporations to be exercised, according to their discretion, for the public good, can not be delegated by them in turn to other agents of their own creation except where the power so to do is also conferred.

"Clark vs. Mayor, etc., of Washington, 12 Wheat., 30.

"1. Dillon Municipal Corp., Sec. 96, and cases cited."

In the case of U. S. *ex rel* Daly vs. MacFarland, 28 D. C. Appeals, 552, the court, on page 558, say:

"It is well settled that the District of Columbia has no legislative power, it being merely a municipal corporation bearing the same relation to Congress that a city does to the legislature of the State in which it is incorporated. U. S. *ex rel*. Kerr vs. Ross, 5 D. C. App., 241, 253; Barnes vs. D. C., 91 U. S., 540, 23 L. Ed., 440; Metropolitan R. R. Co. vs. D. C., 132 U. S., 1, 33 L. Ed., 231, 10 Sup. Ct. Rep., 10; D. C. vs. Woodbury, 136 U. S., 450, 34 L. Ed., 472, 10 Sup. Ct. Rep., 990, 22 Ops. Atty. Gen., 59.

"The next proposition is equally well established, namely, 'a municipal corporation possesses and can exercise the following powers and no others. First, those granted in express words, second, those neces-

sarily or fairly implied in or incident to the powers expressly granted, third, those essential to the declared objects and purposes of the corporation, * * * not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dill. Mun. Corp., 4th Ed., Sec. 89. Judge Dillon in support of the text cites numerous cases. To these may be added: Greater New York Athletic Club vs. Wurster, 19 Misc., 443, 43 N. Y. Sup., 705; Los Angeles City Water Co. vs. Los Angeles, 88 Fed., 720; Coughlin vs. D. C., 25 D. C. App., 251. See also 21 Am. & Eng. Law Ed., page 948."

In the case of *Coughlin vs. D. C.*, 25 App. D. C., 251, there was called in question a regulation promulgated by the Commissioners of the District on February 8, 1905, requiring removal by individual citizens of snow and ice from the sidewalks of the city of Washington within the fire limits, provided a penalty for failing to do so. The court held such regulation null and void, and not coming within the powers given to the District of Columbia by Congress. Speaking of the invalidity of this regulation, the court said:

"The regulation cited is stated to have been copied from an old municipal ordinance of the city of Washington; and authority for its resurrection and reenactment by the Commissioners of the District is claimed to be found in the Act of Congress of January 26, 1887, 24 Stat. at L., 368, Chap. 48, and in the joint resolution of Congress of February 26, 1892, 27 Stat. at L., 394. But no such authority can reasonably be claimed under the Act of 1887, which is specifically restricted to eleven distinct subjects of regulations, of which the removal of snow and ice from the streets of the District is not one. They have reference mainly to the orderly use of the streets by vehicles, droves of animals, or animals running at large to the

charges to be made by hackney carriages, and to the use and storage of inflammable materials. They look mainly to the maintenance of order on the public streets, and to the enactment of regulations, in the strictest sense of that word, and not to the imposition of any duty upon individual citizens.

"The joint resolution of 1892 is considerably broader in its scope; and under it we have held as valid various regulations promulgated by the Commissioners. But it is very clear that even this broad grant of authority, which empowers the Commissioners to make all such reasonable and usual police regulations, in addition to those already made under the Act of 1887, as they might deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of property within the District of Columbia, it is regulation, not legislation that is authorized; the reasonable regulation of the exercise of right, not the imposition of a duty; the usual police regulation for the maintenance of public order, not the levying of a tax either in the way of enforced labor or in the way of the purchase of materials for sprinkling the sidewalks. Whatever power the legislature itself may have in the premises, certainly is not to be presumed to have granted such plenary authority as is here claimed under the joint resolution of 1892.

"That various municipalities may have exercised such power as appears from various municipal ordinances collated in the brief on behalf of the appellee, is not to the point. Municipalities are usually vested with *quasi* legislative powers, among them the sovereign power of taxation and assessment, and from the fact that municipal ordinances are elsewhere to be found, analogous to the so-called regulations here in question, it is not to be inferred that similar power exists in the Commissioners of the District of Columbia. The Commissioners are not the municipality, but only the executive organs of it; and Congress has reserved to itself not only the power to legislate in the strict sense of the word, which it can not constitutionally

delegate to anyone or to any body of men, but even the power of enacting municipal ordinances, such as are within the ordinary scope of the authority of incorporated municipalities. It has delegated to the Commissioners simply the power of making 'police regulations,' and only such police regulation as are usual and commonly known by that designation."

See also

B. & O. R. R. Co. vs. Fitzgerald, 35 D. C. App., 116.

D. C. vs. Willet, 36 App. D. C., 589.

Pitchlynn vs. D. C., 36 App. D. C., 59.

From these authorities it will be seen that the municipality known as the District of Columbia is limited in authority, and that it has no power to pass any law or regulation affecting the use of a license granted by the Congress of the United States, unless the regulation comes within one of the subjects specified in the several Acts given them the authority to make the regulation. And then the regulation must be usual and reasonable. That it can not legislate is settled. That it can not prohibit the doing of an act on Sunday is settled. Therefore, when it attempted to enact Section 16 of Article 16 of the Police Regulations it acts without authority. The section is as follows:

"No owner, proprietor, lessee, tenant or other person shall on the first day of week, commonly known Sunday, in any theater, or other place of amusement, permit, allow or take part in any manner in any public exhibition of any entertainment, play, opera, circus, animals, gymnastics, game, dance, or dances, or vaudeville performance of any kind, except the exhibition of moving or other pictures, vocal or instrumental concerts, or singing by a singer or singers, artist or artists, not in character costume, lectures or speeches, Provided, that nothing herein contained shall be held or construed to change, abrogate or annul the regulations

in force for the protection of the public decency, all of which shall be applicable to the performance allowed under the terms of this regulation."

The authority of the Commissioners to enact regulations of this kind is to be determined by asking the question, "Could they make this regulation effective on any day other than Sunday?" If they have the authority to prohibit the doing of the acts mentioned in this section on any other day, they can then prohibit the doing of these acts on Sunday. But no one claims that they have any such authority. Therefore, this subject-matter is legislative not regulative, and being legislative is not within the power of the Commissioners.

In the case of the District vs. Salmon, tried in the Police Court some years ago, Salmon was arrested charged with carrying on a baseball game on the premises mentioned in this proceeding on Sunday, the judge of the Police Court held that the game of baseball played in an open place did not come within this section, and stated it was unnecessary to consider the question of right to pass a regulation.

In this case counsel representing the District asked the counsel representing Salmon not to argue the question of the power of the Commissioners the counsel representing the District not desiring to have that point raised.

In a letter of June 10, 1910, from E. H. Thomas, at that time corporation counsel for the District, referred to this section, which was then Section 9A of Article 13, and he took the position that it did not apply to exhibitions outside of a building, and so advised the Commissioners, but by the suggestion of the Commissioners the Salmon case was taken into the Police Court as a test case. Copy of this letter is made a part of this brief and attached hereto.

In a letter of February 18, 1910, the corporation counsel took the position that the only Act in regard to prohibiting

baseball was the 17th section of the Act of July 29, 1892, 27th Statute at Large, page 325, copy of this letter is hereto attached and made a part of this brief.

This Act prohibited the playing of baseball on the public streets, avenues and alleys, and is part of the Act of July 29, 1892, which was an Act passed for the preservation of public peace and protection of property within the District.

This same Act, also Section 11, makes it unlawful to molest or disturb any congregation engaged in religious exercise or proceeding, not, however, confining the disturbance to any one particular day of the week.

An examination of the several sections of Article 16 show conclusively that Section 16 was not intended for a game played in the open. Sections 16 to 20 show that all of these sections refer, unless otherwise specified, to theaters or to other public buildings. This is the conclusion that the corporation counsel has come to.

See also

Note to State vs. Chamberlain, 21 Am. & Eng. Ann. Cases 681.

Note to City of Topeka vs. Crawford, 16 Am. & Eng. Ann. Cases 406.

Ex parte Joseph Neet, 157 Mo., 527.

Kansas vs. Prather, 21 L. R. A. N. S., 23.

St. Louis, etc., *et al.*, vs. Delano, *et al.*, 108 Mo., 217.

Carr vs. Indiana, 32 L. R. A. N. S., 1190.

New Mexico vs. Davenport, 41 L. R. A. N. S., 407.

The trial court in his opinion held that if the Commissioners of the District of Columbia had a right to pass a regulation embracing the subject-matter of this section, nevertheless, he would have to hold the section void as contrary to the Fourteenth Amendment to the Constitution, as

being class legislation not operating alike on persons in the same character of business.

See

Denver vs. Bach, 26 Colo., 530.

Yick Wo. vs. Hopkins, 118 U. S., 356.

From these authorities it is respectfully submitted that the appellee is entitled not only to his mandamus, but also to the protective relief of equity.

Respectfully submitted,

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